IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 823 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

GOVINDBHAI LAKHABHAI

Appearance:

1. Criminal Appeal No. 823 of 1991

MR KOGJE, A.P.P. for Petitioner No. 1

MR JM BUDDHBHATTI for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/01/2003

ORAL JUDGEMENT

1. The State of Gujarat has filed this Appeal against the Judgment and order of acquittal dated 14.8.1991 passed by the learned J.M.F.C., Dahod, in Criminal Case No.958 of 1990 whereby the learned Magistrate acquitted the respondent - accused Police Constable Govindbhai Lakhabhai for the offences

u/ss.66(1)(b) & 85(1)(3) of the Bombay Prohibition Act.

2. The learned Magistrate acquitted the respondent accused for the offence u/ss.66(1)(b) & 85(1)(3) of the Bombay Prohibition Act on the ground that all the witnesses have turned hostile and they have not supported the case of the prosecution that after having drunk he was misbehaving in public place. The learned Magistrate also found that the respondent - accused sleeping in his house and he was dragged from his house while he was sleeping. If that is so then this Court will not interfere with such a findings.

3. Learned A.P.P. Shri Kogje submitted that as per the Report of the Chemical Analyzer the percentage of 1.656 of Alcohol was found in his blood and therefore the learned Magistrate should have raised the presumption against the accused and in absence of the same being discharged by the accused he ought to have convicted the accused for the offence u/s.66(1)(b). It is true that the presumption has to be raised which is to be discharged by the accused, but having regard to the reasoning given by the learned Judge for acquitting the respondent - accused u/s.66(1)(b) and that all the prosecution witnesses turned hostile for the offence u/s. 85(1)(3), I do not see any reason to interfere with the impugned order passed by the learned Magistrate.

4. Learned Counsel Shri Budhbhatti for the respondent - accused submitted that he is appearing as amicus curiae for the respondent - accused as he is absolutely poor and not able to defend him. He supported the impugned order of acquittal passed by the learned Magistrate and submitted that in such type of case the Appellate Court should be slow in interfering with the order.

5. In view of what is stated above I do not see any reason to interfere with the impugned order passed by the learned Magistrate. The Appeal, therefore, fail and is hereby dismissed.

Date : January 23, 2003 (B.J.Shethna, J.)

sas